IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. 76-1299

MARY A. GRAVES and GARY MORRIS, Individually and on Behalf of All Other Persons Similarly Situated,
Appellants,

vs.

JOHN MEYSTRIK, Director of the Division of Employment Security of the State of Missouri, Individually and in His Official Capacity; JAMES J. BUTLER, CARL J. BROWN and GEORGE E. TAFF, Members of the Labor and Industrial Relations Commission of the State of Missouri, Individually and in Their Official Capacity,
Appellees.

On Appeal from the United States District Court
Eastern District of Missouri, Eastern Division

JURISDICTIONAL STATEMENT

STUART R. BERKOWITZ
The Legal Aid Society of the
City and County of St. Louis
607 North Grand Boulevard
St. Louis, Missouri 63103
Attorney for Appellants

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

Table of Cases Cited

Statutes and Miscellaneous Cited

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1976

No. .....

MARY A. GRAVES and GARY MORRIS, Individually and on Behalf of All Other Persons Similarly Situated,
Appellants,

vs.

JOHN MEYSTRIK, Director of the Division of Employment Security of the State of Missouri, Individually and in His Official Capacity; JAMES J. BUTLER, CARL J. BROWN and GEORGE E. TAFF, Members of the Labor and Industrial Relations Commission of the State of Missouri, Individually and in Their Official Capacity,
Appellees.

On Appeal from the United States District Court
Eastern District of Missouri, Eastern Division

JURISDICTIONAL STATEMENT

PRELIMINARY STATEMENT

This is an appeal from the final order and judgment of the Three-Judge District Court for the Eastern District of Missouri. This statement is submitted pursuant to Rule 15 of the Rules of the Supreme Court to demonstrate that this Court has jurisdiction to consider the appeal and that substantial federal questions are involved.

OPINION BELOW

The District Court on January 3, 1977 decided and filed its written opinion, which is not yet reported. A copy of the opinion is included in this jurisdictional statement as Appendix A.

JURISDICTION

A. Nature of Action

Appellants are claimants for Missouri unemployment compensation benefits who were receiving benefits and had them terminated and/or suspended without a prior notice and hearing. This practice is authorized by virtue of §§ 288.070.3 and .5 of the Revised Statutes of Missouri, Supp. 1975.[1] The effect of these provisions is to permit a claims deputy to render a finding of ineligibility to a continuing recipient without the benefit of prior notice and hearing.

[1] Sections 288.070.3 and .5 read as follows:

> .3. The deputy shall in writing promptly notify the claimant of his determination on an initial claim, including the reason therefor, and a copy of the written statement as provided in subsection 2. The deputy shall promptly notify the claimant and all other interested parties of his determination on any claim for benefits and shall give the reason therefor; provided, however, where a determination on a later claim for benefits in a benefit year is the same as the determination on a preceding claim, no additional notice shall be given. A determination shall be final, when unappealed, in respect to any claim to which it applies except that an appeal from a determination on a claim for benefits shall be considered as an appeal from all later claims to which the same determination applies. The deputy may, however, not later than one year following the end of a benefit year, for good cause, reconsider any determination on any claim and shall promptly notify the claimant and other interested parties of his redetermination and the reasons therefor. Whenever the deputy shall have notified any interested employer of the denial of benefits to a claimant for any week or weeks and shall thereafter allow benefits to such claimant for a subsequent week or weeks, he shall notify such interested employer of the beginning date of the allowance of benefits for such subsequent period.
>
> .5. Benefits shall be paid promptly in accordance with a determination or redetermination under this section, or the decision of an appeals tribunal, the industrial commission of Missouri, or a reviewing court upon the issuance of such determination, redetermination, or decision (regardless of the pendency of the period to apply for reconsideration, file an appeal, or petition for judicial review as provided in this section, or section 288.190, 288.200 or 288.210, as the case may be, or the pendency of any such application, appeal or petition) unless and until such determination, redetermination or decision has been modified or reversed by a subsequent redetermination or decision, in which event benefits shall be paid or denied for weeks of unemployment thereafter in accordance with such modified or reversed redetermination or decision.

Appellants contend that the application of these statutory provisions violates 42 U.S.C. § 502(a)(1) and (3) and the Due Process Clause of the Fourteenth Amendment to the United States Constitution.

B. Prior Proceedings

Plaintiffs commenced this action on April 15, 1976, as a class action seeking declaratory and injunctive relief to the effect that they were entitled to a notice and hearing prior to the termination of their unemployment benefits.

Shortly after the filing of plaintiffs' Complaint, on April 20, 1976, a Three-Judge District Court was instituted to hear this cause in the court below as provided by 28 U.S.C. § 2284.

On September 20, 1976, the three judge court entered an order designating this case as a class action pursuant to Rules 23(a) and (b)(2) of the Federal Rules of Civil Procedure. The Court's class action order is included herein as Appendix B.

The case was submitted upon stipulations and briefs at a hearing held before the three judge court on November 23, 1976.

On January 3, 1977, the Three-Judge District Court, in a unanimous decision, dismissed plaintiffs' claims with prejudice at plaintiffs' cost. The court found that §§ 288.070.3 and .5 R.S.Mo., Supp. 1975 violated neither procedural due process nor 42 U.S.C. § 503(a)(1) and (3) to the extent that they authorize the termination of Missouri unemployment compensation benefits without a prior notice and hearing.

A notice of appeal to this court was filed in the United States District Court for the Eastern District of Missouri, Eastern Division on January 20, 1977.

This is a direct appeal from the judgment of a Three-Judge District Court denying, after hearing, an injunction against enforcement of a State statute, a case required by 28 U.S.C. §§ 2281 and 2284, to be heard by a Three-Judge Court. This Court has jurisdiction to consider this appeal under 28 U.S.C. § 1253. See *Florida Lime and Avocado Growers, Inc. et al. v. Jacobsen*, 362 U.S. 73 (1960); *MTM, Inc. v. Baxley*, 420 U.S. 799 (1975).

QUESTION PRESENTED

Whether Sections 288.070.3 and 288.070.5 R.S.Mo. Supp. 1975 and the application of these sections by the defendants, violate Title 42 U.S.C. § 503(a)(1) and (3) and the Fourteenth Amendment for failure to provide notice and a prior evidentiary hearing before a claimant, who had received benefits for a prior week or weeks claimed, for unemployment benefits is denied benefits for a particular week or weeks claimed.

STATEMENT OF THE CASE

The record in the Court below is clear and factually undisputed by virtue of a *Joint Stipulation* filed by the parties on August 31, 1976.

In general, under the Missouri Employment Security Law, Chapter 288, R.S.Mo. (1969), a claimant for benefits must file an initial claim at a local claims office. After going through an initial eligibility process, a claimant need only mail in a claim card upon an agency form to continue receiving weekly benefits.

Although eligibility determinations are made upon a week-by-week basis, a claimant will normally continue to receive benefit checks (until his entitlement is exhausted) by simply filling out and mailing in his claim card. When an issue as to continued eligibility arises the claims deputy will suspend and/or terminate benefits and accordingly notify the claimant. In some cases the recipient's benefits are terminated and he is sent a notice of ineligibility. In most cases, however, benefits are only suspended and the claimant is notified upon an agency form to report immediately to the local office. An interview is then held with a claims deputy who subsequently makes a determination. (The Missouri Employment Security Act, Chapter 288 R.S.Mo., Supp. 1975, does not require an interview.) A claimant determined ineligible is so notified upon a written form which also explains to the individual the procedure for taking an appeal to an evidentiary *de novo* hearing before a referee.

The plaintiffs are individuals who received benefits but had them suspended and/or terminated without being afforded a prior notice and hearing. Plaintiffs' contention that a prior hearing is required is two-fold.

First, due process demands pre-termination hearings to putatively eligible recipients of unemployment benefits. See

Goldberg v. Kelly, 397 U.S. 254 (1970); *Fuentes v. Shevin*, 407 U.S. 67 (1972); *Bell v. Burson*, 402 U.S. 535 (1972).

Second, the Federal Social Security Act, 42 U.S.C. §§503 (a)(1) and (3) requires that benefits be paid "when due" which defendants have failed to do. See *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971).

The district court found that *Mathews v. Eldridge*, 424 U.S. 319 (1976) "is controlling" on plaintiffs' constitutional claim because (a) unemployment compensation, unlike welfare, is not based on need; (b) the risk of an erroneous decision is "slight" (App. A., p. A-20) and the delay caused by a post-termination hearing is "minimal" (App. A., p. A-20); and (c) the additional burden on the state would be substantial.

The federal statutory argument based upon the "when due" Clause of the Social Security Act, 42 U.S.C. §§503(a)(1) and (3) and this Court's decision in *Java, supra*, was rejected because "initial determinations are made on a week-to-week basis."

THE QUESTIONS ARE SUBSTANTIAL

Although the question presented by this appeal has reached the Supreme Court on four prior occasions, the issue of pre-termination unemployment compensation hearings has yet to be resolved. See *Hiatt v. Indiana Employment Security Division*, 347 F.Supp. 218 (N.D. Ind. 1971), *sub nom, Burney v. Indiana Employment Security Division, vacated and remanded to consider mootness*, 409 U.S. 540 (1973); *Torres v. New York State Department of Labor*, 333 F.Supp. 341 (S.D. N.Y. 1971), *sum aff'd*, 405 U.S. 949 (1972); *Pregent v. New Hampshire Department of Employment Security*, 361 F.Supp. 782 (D. N.H. 1973), *vacated and remanded to consider mootness*, 417 U.S. 903 (1974); and *Fusari v. Steinberg*, 364 F. Supp. 922 (D. Conn. 1973), *vacated and remanded*, 419 U.S. 379 (1973).

The constitutional and statutory contentions are substantial for the same reasons that in three of the four prior cases raising he identical issue the Court noted probable jurisdiction. The resolution of this case is not only of critical importance to the hundreds of Missouri unemployment claimants herein but also to the many thousands of people throughout the country who are subjected to the same practice.

In the context of this case the issue is ready to be decided.

Unlike *Hiatt, supra*, and *Pregent, supra*, the lower court has already considered and rejected defendants' mootness claims. In certifying the class action the Court found that this case fell within the "capable of repetition, yet evading review" exception to mootness. (Court's Memorandum Order, Appendix B., p. A-27).

Likewise, the intervening changes in state law that precluded a decision in *Fusari, supra*, are not present here. The Connecticut unemployment insurance system at the time of *Fusari* was acknowledged to have the most egregious delays in processing post-termination hearings among all the states.

The State of Missouri on the other hand appears to have a hearings process which is fairly representative in terms of achieving promptness. Yet it is clear that most Missouri unemployment recipients are required to wait at least several weeks to several months for a post-termination decision, during which period the erstwhile worker is not receiving the benefits which were intended to be his means of support. Thus the Court will be able to decide whether or not a claimant faced with a fairly typical delay, as opposed to an obviously extended delay *(Fusari)*, is entitled to a pre-termination hearing.

Since the length of delay is a principal consideration and may vary from state to state, plenary disposition of this case is likely to have general applicability to virtually all state unemployment compensation systems.

CONCLUSION

As demonstrated above the questions presented are clearly so substantial as to require plenary disposition. It is submitted that the district court incorrectly analysed this case as being controlled by *Mathews, supra,* and thus erred in assessing the governmental and private interests at stake. Plaintiffs also submit that the district court erred in failing to find that the "when due" clause of 42 U.S.C. §§503(a) (1) and (3) as interpreted in *Java, supra,* requires pre-termination hearings.

Respectfully submitted,

STUART R. BERKOWITZ
607 North Grand Boulevard
St. Louis, Missouri 63103
Attorney for Appellants
The Legal Aid Society of the City
and County of St. Louis

APPENDIX

APPENDIX A

United States District Court
Eastern District of Missouri
Eastern Division

Mary A. Graves and Gary Morris, individually and on behalf of all other persons similarly situated, Plaintiffs, v. John Meystrik, Director of the Division of Employment Security of the State of Missouri, individually and in his official capacity; James J. Butler, Carl J. Brown and George E. Taff, members of the Labor and Industrial Relations Commission of the State of Missouri, individually and in their official capacity, Defendants.	No. 76-336 C (1)

JUDGMENT

Findings of fact and conclusions of law dated this day are hereby incorporated into and made a part of this judgment.

It Is Hereby Ordered, Adjudged, and Decreed that judgment is rendered in favor of all defendants, and against all plaintiffs, and the cause is dismissed with prejudice at the cost of the plaintiffs.

Dated this 3rd day of January 1977.

WILLIAM H. WEBSTER
Judge, U. S. Court of Appeals

JAMES H. MEREDITH
Judge, U. S. District Court

H. KENNETH WANGELIN
Judge, U. S. District Court

United States District Court
Eastern District of Missouri
Eastern Division

Mary A. Graves and Gary Morris, individually and on behalf of all other persons similarly situated,
Plaintiffs,
v.
John Meystrik, Director of the Division of Employment Security of the State of Missouri, individually and in his official capacity; James J. Butler, Carl J. Brown, and George E. Taff, members of the Labor and Industrial Relations Commission of the State of Missouri, individually and in their official capacity,
Defendants.

No. 76-336 C (1)

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plaintiffs, Mary A. Graves and Gary Morris, brought this action on behalf of themselves and as representatives of a class

composed of all those persons who have been or in the future will be determined eligible to receive Missouri unemployment compensation benefits without timely and adequate prior notice and opportunity for an evidentiary hearing. On September 22, 1976, this three-judge court ruled that the plaintiffs could proceed as representatives of the above-described class, pursuant to Fed.R.Civ.P. 23(d)(2). The defendants in this action are John Meystrik, Director of the Division of Employment Security of the State of Missouri, and James J. Butler, Carl J. Brown, and George E. Taff, members of the Labor and Industrial Relations Commission of the State of Missouri.

The plaintiffs contend that sections 288.070.3 and 288.070.5, R.S.Mo. 1969, as amended 1973, of the Missouri Employment Security Act, violate the Due Process Clause of the Fourteenth Amendment to the United States Constitution and the Social Security Act, 42 U.S.C. § 503(a)(1) and (3), insofar as unemployment compensation benefits are terminated without notice and opportunity for a prior evidentiary hearing. The plaintiffs seek declaratory and injunctive relief as authorized by 42 U.S.C. § 1983 and 28 U.S.C. §§ 2201 and 2202 to redress these alleged deprivations of rights.

This matter was tried to the Court without a jury. The Court has been duly informed by stipulation of facts, briefs, exhibits, and depositions. The Court makes the following findings of fact and conclusions of law:

Findings of Fact

1. The Missouri Division of Employment Security (hereinafter Division) is a federal-state-local partnership formed to serve employers and those seeking employment. The Division is comprised of a central office in Jefferson City, Missouri, and forty local offices. The Employment Security Program was established under the provisions of the Wagner-Peyser Act, 1933, and the

Social Security Act, 1935. The Division pays unemployment insurance benefits and collects the necessary payroll taxes from Missouri employers in accordance with the Missouri Employment Security Law.

2. Administrative and operating costs of the Division are paid out of federal grants derived from federal taxes paid by employers and made available by Congressional appropriations. Funds for the payment of weekly benefits to qualified workers are collected through payroll taxes paid by Missouri employers, as defined by the Missouri Employment Security Law, and are maintained in the "Unemployment Compensation Fund", which is set aside for that sole purpose, and is administered by the Division.

3. Under the Missouri Employment Security Law, Chapter 288, R.S.Mo. 1969, as amended 1973, the eligibility of a claimant for unemployment benefits is determined on a week-to-week basis. Accordingly, a claimant must file a claim for benefits each week, and a determination of the claimant's eligibility is then made for the particular week claimed.

4. If the claimant is determined eligible and not disqualified for the particular week claimed, he is paid benefits for that week. If he is determined ineligible or disqualified, he is not paid benefits for the week claimed.

5. As a result of the above, there are situations wherein a claimant, who has been determined eligible and paid benefits for certain prior weeks, may be determined to be ineligible or disqualified for a particular later week in which he files a claim because he failed for that week to meet all the requirements in the statute for eligibility.

6. Claimants are given claim cards which may be mailed to the local office for the respective week in which the claimant is filing a claim. Each week that a card comes in, the deputy reviews the card and based upon the information contained therein,

makes a determination as to the claimant's eligibility for that particular week.

7. If the information on the claim card clearly indicates that the claimant is eligible for benefits, the deputy will immediately make a determination of eligibility and the claimant will be paid benefits for that week.

8. If the information contained on the claim form for a particular week claimed clearly indicates to the deputy that the claimant is not eligible for that week, the deputy will make a determination of ineligibility and mail same to claimant. As a result of this determination, the claimant will not be paid benefits for the week in which he was found ineligible.

9. If the information contained on the claim card for a particular week, or if any other information which has been received from any other source, raises a question regarding the claimant's eligibility for that week, the claimant is immediately notified by phone or in writing to report promptly to the local office. It is the policy of the Division, and the deputies are so instructed, that at the time the claimant is given such notice to report to the local office, he is also informed as to the specific question which has been raised regarding his eligibility for that particular week.

10. Should the claimant fail to report to the local office as requested, the deputy makes a determination as to eligibility for the week in question based upon the information available to him. If the deputy determines the claimant is eligible, he will receive his benefit check for that week. If the deputy makes the determination that the claimant is ineligible, he will not be paid benefits for that week, but will receive a written determination of his ineligibility from which he has the right to appeal.

11. Since allowance or denial of benefits is determined on a week-to-week basis, a claimant who is denied benefits for a

particular week will be found eligible by the deputy for subsequent weeks claimed in which he has been found to meet all the eligibility requirements.

12. If the claimant reports as requested for an interview by a deputy, the deputy affords the claimant the opportunity to rebut the information the deputy has which indicates possible ineligibility. The claimant is given an opportunity to explain or add any facts which relate to his eligibility for benefits for the week or weeks in question. During the interview, the deputy prepares a summary of the interview. The claimant is asked to read it and, if he agrees with the prepared statement, to sign the statement.

13. If additional information is necessary for the deputy to make a proper determination regarding the issue raised, the deputy will attempt to secure it from the interested parties, including the claimant.

14. Based upon the information received by the deputy regarding the question of eligibility for that particular week, the deputy will make a determination as to whether or not the claimant is eligible for the week claimed. If the deputy allows benefits for the week in question, a check for that week will be issued. If the deputy denies benefits for the week in question, the claimant will receive written notice of such denial, and the reasons therefor. Upon receipt of this notice, the claimant has the right to appeal.

15. When unemployment benefits have been allowed by a deputy, an employer who was entitled to notice of the deputy's determination may appeal.

16. Benefits paid to an unemployed claimant may be charged to the tax accounts of his past employers. The amount of unemployment tax an employer pays depends in large measure on the benefits charged to his account.

17. An appeal is a written statement of the reasons why the appellant believes the determination of the deputy is wrong. This written statement can be filed either in person or by mail at the local office of the Division where the determination was made. The address of such local office is shown on the determination. The statement can be written in a letter or on forms which will be furnished by the deputy on request.

18. The procedure for filing an appeal from a deputy's determination is explained on the face of the determination itself.

19. An appeal provides the appellant and all interested parties an opportunity for a complete evidentiary *de novo* hearing before an appeals referee. Any interested party to the appeal may be represented by an attorney.

20. Notice of the time, date, and place of a hearing are mailed to the appellant and all interested parties several days in advance of the hearing.

21. In those cases where a claimant has appealed, the employer will receive with his notice of the hearing a copy of the appeal filed by the claimant or notice of the issues raised by the appeal. Likewise, in those cases where the employer has appealed, the claimant will receive with his notice of hearing a copy of the appeal filed by the employer or notice of the issues raised by the appeal.

22. During the hearing, each party is permitted to present his testimony and evidence, and each party is permitted to question the opposing party and opposing witnesses. Testimony taken at the hearing is given under oath and recorded either by a shorthand reporter or by a recording machine.

23. Appeals referees hold hearings in the various local offices of the Division for a week at a time, and then return to the central office in Jefferson City to write their decisions, except

for certain appeals referees stationed in St. Louis, who hold hearings in the morning and write decisions in the afternoon.

24. Once the decision has been written, a copy is mailed to each interested party to the appeal. It normally takes between one and two weeks from the time a hearing is held until the decision is mailed to all interested parties.

25. The decision consists of a findings of fact and an application of the relevant provisions of the law to the facts. The decision becomes final, unless one or more of the interested parties files an application within ten days following the date of the mailing of the decision to have the decision reviewed by the Labor and Industrial Relations Commission of Missouri. A statement of instructions for filing such an application is mailed with each decision.

26. The Labor and Industrial Relations Commission may allow or deny an application for review. If an application is allowed, the Commission may affirm, modify, reverse, or set aside the decision of the appeals referee on the basis of the evidence previously submitted in the case, or may take additional evidence, or may remand the case to the appeals referee with directions.

27. Any interested party aggrieved by a decision of the Labor and Industrial Relations Commission may secure judicial review of same by filing an action in the appropriate state circuit court.

28. From January 1975 through May 1976, there were 8,545,761 claims for unemployment benefits in the State of Missouri, and from January 1975 through July 1976, the Division received a total of 30,981 appeals from all its unemployment programs. During the period beginning January 1975 and ending May 31, 1976, there were 21,902 appeals from deputys' determinations by claimants seeking Regular Unemployment Insurance, and 5,448 appeals from claimants seeking

benefits under one of the Division's eight other programs. It should be noted that statistics showing the number of claimants who filed appeals after their benefits were terminated were unavailable.

29. From January 1975 through July 1976, there were 22,739 appeals decisions rendered with regard to Regular Unemployment Insurance. Of this total, an average of 18.96 percent were reversed, and, on the average 40.22 percent of the appeals decisions were rendered within less than thirty days of filing, and 70.45 percent were rendered within less than forty-five days of the filing of the appeal.

30. From March 1975 through July 1976, there were 868 appeals decisions rendered concerning claims made under the Extended Benefits Program, one of the other eight programs offered by the Division. Of this total, an average of 19.93 percent were reversed, and, on the average, 28.06 percent of the appeals decisions were rendered within less than thirty days of filing, and 60.68 percent were rendered within less than forty-five days of the filing of the appeal.

31. According to Unemployment Insurance Statistics, published by the United States Department of Labor, Employment Training Administration, of the fifty-two states and territories required to file appeal time lapse figures, Missouri processed the ninth largest number of appeals decisions during the period from January 1975 to December 1975. In that same period of time, seventeen out of the fifty-two states and territories reported processed a larger percentage of appeals within thirty days than did Missouri, but none of those seventeen states was required to render as many appeals decisions as was Missouri.

32. Of the fifty-two states and territories reporting the time lapse between date of filing appeals and date of decisions from January 1975 to December 1975, seventeen processed a higher

percentage of appeals decisions within forty-five days than did Missouri. None of those seventeen states was required to process as many appeals decisions as Missouri during that same period of time.

33. Of the fifty-two states and territories reporting to the Department of Labor for the period of January 1975 to December 1975, twenty processed a higher percentage of appeals within seventy-five days. Only one of those twenty states was required to process more appeals decisions within that period of time than was Missouri. With regard to that state, Massachusetts, the statistics include decisions rendered by the Massachusetts director or his representative. The statistics published by the Department of Labor do not indicate that any other state reported decisions rendered by its director or his representative.

34. The federal standard for appeals promptness is set out at 20 C.F.R., sections 650.2, 650.3, and 650.4, which provide in pertinent part as follows:

"§ 650.2 Federal Law requirements.

"(a) Section 303(a)(1) of the Social Security Act requires that a State law include provision for:

> "Such methods of administration * * * as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.

"(b) Section 303(a)(3) of the Social Security Act requires that a State law include provision for:

> "Opportunity for a fair hearing, before an impartial tribunal for all individuals whose claims for unemployment compensation are denied.

"(c) Section 303(b)(2) of the Social Security Act provides that:

> "Whenever the Secretary of Labor, after reasonable notice and opportunity for hearing to the State agency charged with the administration of the State law, finds that in the administration of the law there is—
>
> (1) * * *
>
> (2) A failure to comply substantially with any provision specified in subsection (a)[303(a)]; the Secretary of Labor shall notify such State agency that further payments will not be made to the State until he is satisfied that there is no longer any such denial or failure to comply. Until the Secretary of Labor is so satisfied, he shall make no further certification to the Secretary of the Treasury with respect to such State * * *

"650.3 Secretary's interpretation of Federal law requirements.

"(a) The Secretary interprets sections 303(a)(1) and 303(a)(3) above to require that a State law include provision for—

"(1) Hearing and decision for claimants who are parties to an appeal from a benefit determination to an administrative tribunal with the greatest promptness that is administratively feasible, and

"(2) Such methods of administration of the appeals process as will reasonably assure hearing and decision with the greatest promptness that is administratively feasible.

"(b) The Secretary interprets [sic] section 303(b)(2) above to require a State to comply substantially with provisions specified in paragraph (a) of this section.

"650.4 Review of State law and criteria for review of State compliance.

"(a) A State law will satisfy the requirements of § 650.3(a) if after calendar year 1973 it contains a pro-

vision requiring, or is construed to require, hearing and decision for claimants who are parties to an administrative appeal affecting benefit rights with the greatest promptness that is administratively feasible.

"(b) A State will be deemed to comply substantially with the State law requirements set forth in § 650.3(a) with respect to first level appeals, if for the calendar year 1975 and ensuing years, the State has issued at least 75 percent of all first level benefit appeal decisions within 30 days of the date of appeal, and at least 85 percent of all first level benefit appeal decisions within 45 days. These computations will be derived from the State's regular reports required pursuant to the Employment Security Manual, Part III, Sections 4400-4450.

"(c) To afford the States a reasonable opportunity to make the changes necessary to meet these criteria, the Secretary will not evaluate substantial compliance until calendar year 1974 and for that year he will apply less stringent criteria than for future years. A State law will be deemed to comply substantially with the State law promptness requirement for calendar year 1974 if the State has issued at least 50 percent of all first level benefit appeal decisions within 30 days of the date of appeal; at least 75 percent of its first level benefit appeal decisions within 45 days; and at least 90 percent of its first level benefit appeal decisions within 75 days. These computations also will be derived from the aforementioned reports required pursuant to the Employment Security Manual."

35. Volume 41, No. 31, of the Federal Register, published on February 13, 1976, provides in pertinent part at page 6757, with regard to Title 20, part 650, as follows:

> "The requirement of the standard is one of substantial compliance with the promptness criteria stated therein. When a State fails to meet the promptness criteria a determination must be made as to whether the State nonetheless had demonstrated the requisite substantial compliance. Such a determination requires an inquiry into the circumstances that have prevented the State from meeting the specified criteria. If the inquiry demonstrates that the State has achieved the greatest appeals promptness reasonably attainable in its circumstances, the State may be considered to be in substantial compliance."

36. At all times since the filing of the plaintiffs' complaint to date, the State of Missouri has been considered by the Department of Labor to be in compliance with the Federal Regulations. The economic situation of this country during the past two years has had a tremendous and unpredictable affect on the area of unemployment compensation and has resulted in an enormous increase in claims for unemployment benefits and appeals growing out of such claims. Throughout the unexpected increase in unemployment stated above, the State of Missouri has been considered by the Department of Labor to have achieved the greatest appeals promptness reasonably attainable under the circumstances and has consistently been in substantial compliance with that Department's appeals promptness requirements.

37. Plaintiff Mary A. Graves renewed a claim for Special Unemployment Assistance under Title II of the Emergency Jobs and Unemployment Assistance Act of 1974. The effective date of her renewed claim was January 18, 1976. She subsequently filed claims for unemployment benefits for certain weeks thereafter.

Pursuant to section 288.070 of the Missouri Employment Security Law, R.S.Mo. 1969, the Missouri Division of Employment Security mailed a notice of renewed claim for unemployment benefits to the plaintiff's last employer, Reserve Office Force Company, whose name was furnished by the plaintiff when she filed her renewed claim.

The plaintiff's last employer sent to the Division a letter dated February 26, 1976, stating that the plaintiff had refused an offer of work made by the employer on said date.

The plaintiff filed her claim for unemployment benefits for the week ending February 28, 1976, by mailing to the Division her claim card for that week. On this card the plaintiff stated that she had not refused any work during the week. The card was signed by the claimant, and the signature is dated February 28, 1976.

Due to the discrepancy between the information contained in the February 26, 1976, letter from the plaintiff's last employer and the information contained in the plaintiff's claim card for the week ending February 28, 1976, the plaintiff was notified to report to the local office of the Division.

On or about March 4, 1976, the plaintiff reported to the local office of the Division and was interviewed by a deputy regarding her claim for the week ending February 28, 1976. She was also shown the letter from her last employer and given an opportunity to present any information regarding her claim for the week in question.

After receiving the information presented by the plaintiff, and based upon all information available to him, the deputy made his determination regarding the plaintiff's claim for benefits for the week ending February 28, 1976. The determination of the deputy was made and mailed to the plaintiff on March 11, 1976. The deputy determined that the plaintiff was not disqualified for uemployment benefits, because she had good cause for refusing the offer to work made by her last employer. However, the deputy did determine that the plaintiff was ineligible for benefits for the week ending February 28, 1976, because she was restricting her availability for employment by working in a part-time job four and one-half hours per week, and was not available for full-time employment.

As a result of the deputy's determination that the plaintiff was ineligible for unemployment benefits for the week ending February 28, 1976, the plaintiff was not paid such benefits for that week.

On March 17, 1976, the plaintiff filed a timely appeal from the deputy's determination. After due notice to the interested parties, the appeal was heard by an appeals referee of the Division in St. Louis, Missouri, on April 29, 1976.

On May 11, 1976, the appeals referee entered his decision reversing that part of the deputy's determination which found the plaintiff ineligible for unemployment benefits. The appeals referee found that the plaintiff was eligible for such benefits for the week ending February 28, 1976.

Pursuant to the May 11, 1976, decision of the appeals referee, the plaintiff was paid unemployment benefits for the week ending February 28, 1976. The check paying such benefits was issued May 15, 1976.

38. Plaintiff Gary T. Morris filed an initial claim for unemployment insurance benefits, effective August 31, 1975, under the Missouri Employment Security Law, and claimed benefits for each subsequent week through December 13, 1975, at which time he had exhausted his benefits under the regular unemployment insurance program.

The plaintiff then filed an application for benefits under the Extended Benefits Program, effective December 14, 1975, and claimed benefits for each subsequent week through February 7, 1976, at which time he had exhausted his benefits under the Extended Benefits Program.

On February 11, 1976, the plaintiff filed an application for benefits under the Federal Supplemental Benefits Program, effective February 8, 1976. At the time of filing this application under the Federal Supplemental Benefits Program, the plaintiff

had been enrolled as a student and attending classes at the University of Missouri at St. Louis, and so informed the deputy. The information provided by the plaintiff on February 11, 1976, regarding his enrollment as a student, raised an issue as to the plaintiff's eligibility for benefits for certain weeks. The plaintiff was given the necessary forms and claim cards for the first two weeks (February 8 through February 21, 1976), and as a result of the issue raised, instructed to report back on February 26, 1976, for an interview.

On April 1, 1976, the deputy made a determination that the plaintiff was ineligible for benefits from August 31, 1975, to January 24, 1976, because during that period the plaintiff was a full-time student and not available for work. The deputy also determined that the ineligibility of the plaintiff resulted in his being overpaid $906.63 on his Regular Unemployment Insurance claim and $453.32 on his claim under the Extended Benefits Program. These determinations were each mailed to the plaintiff.

The plaintiff was otherwise eligible for benefits for certain weeks claimed subsequent to January 24, 1976, but was not paid for those weeks, because the plaintiff's weekly benefit amount was applied to offset his overpayment.

On April 9, 1976, the plaintiff filed a timely appeal from the deputy's determinations. After due notice to the interested parties, the appeal was heard by an appeals referee of the Division in St. Louis, Missouri, on May 19, 1976.

On May 24, 1976, the appeals referee entered his decision affirming the determinations of the deputy.

Plaintiff Morris, thereafter filed a timely application for review to the Labor and Industrial Relations Commission which, as of the date of trial, was pending.

39. Although so empowered by law, it is the policy of the Division not to institute court proceedings to recover benefit overpayments; however, the Division does make efforts short of court action to recover any such moneys.

40. As stipulated by the parties, the legal issue to be resolved in this matter is whether sections 288.070.3 and 288.-070.5, R.S.Mo. Supp. 1973, and the application of those sections by the defendants, violate Title 42, U.S.C., section 503(a)(1) and (3), and the Fourteenth Amendment of the United States Constitution for failure of same to provide notice and a prior evidentiary hearing before a claimant, who had received benefits for a prior week or weeks claimed, for unemployment benefits, is denied benefits for a particular week or weeks claimed.

Conclusions of Law

Prior to determining the stipulated legal issue, the Court must resolve the threshold issue of whether the constitutional due process requirements of the Fourteenth Amendment to the United States Constitution apply to the state's granting or denying of unemployment benefits. The Supreme Court has made it clear ". . . that the property interests protected by procedural due process extend will beyond actual ownership of real estate, chattels, or money." *Board of Regents v. Roth*, 408 U.S. 564, 571-72 (1972). Accordingly, the procedural due process requirements of the Fourteenth Amendment have been held to apply to a wide variety of property interests.[1] Unemployment benefits like welfare benefits, ". . . are a matter of statutory entitlement for persons qualified to receive them," *Goldberg v.*

[1] See, e.g., *Flemming v. Nestor*, 363 U.S. 603 (1960) (social security benefits); *Sniadach v. Family Finance Corp.*, 395 U.S. 337 (1969) (wages); *Goldberg v. Kelly*, 397 U.S. 254 (1970) (welfare benefits); *Bell v. Burson*, 402 U.S. 535 (1971) (driver's license); *Fuentes v. Shevin*, 407 U.S. 67 (1972) (consumer goods); *Wisconsin v. Constantineau*, 400 U.S. 433 (1971) (good name and reputation).

Kelly, 397 U.S. 254, 262 (1970), and, therefore, are interests, like welfare benefits or wages, which are protected by the procedural due process requirements of the Fourteenth Amendment.

Having determined that procedural due process does apply, the Court must now decide what is necessary to satisfy those requirements. More specifically, does the present system which affords claimants a post-termination evidentiary hearing meet the due process requirements, or is a pre-termination evidentiary hearing necessary? The plaintiffs rely principally on *Goldberg v. Kelly*, supra, in which the Supreme Court held that welfare benefits could not be terminated without first providing the recipient with a pre-termination evidentiary hearing. The defendants' case rests mainly on *Mathews v. Eldridge*, 424 U.S. 319 (1976). In *Mathews*, the Court was confronted with arguments based on *Goldberg* similar to those advanced here by the plaintiffs. While holding that an evidentiary hearing was not necessary prior to the termination of disability benefits under the Social Security Act, the Court stated that:

> "Only in *Goldberg* has the Court held that due process requires an evidentiary hearing prior to a temporary deprivation." *Mathews v. Eldridge*, 424 U.S. 319, 340 (1976).

For the reasons stated below, *Mathews* is controlling in this matter; therefore, an evidentiary hearing prior to the termination of unemployment benefits in Missouri is not necessary.

In determining whether the administrative procedures provided meet the procedural due process requirements of the Fourteenth Amendment, three distinct factors must be considered:

> ". . . first, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Government's interest, including the functions involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail." Id. at 335.

While determining the nature of the government function involved and the affected private interests concerning welfare benefits, the Court stated in *Goldberg v. Kelly*, supra, at 264, that:

> "Thus the crucial factor in this contest—a factor not present in the case of the black-listed government contractor, the discharged government employee, the taxpayer denied a tax exemption, or virtually anyone else whose governmental entitlements are ended—is that termination of aid pending resolution of a controversy over eligibility may deprive an *eligible* recipient of the very means by which to live while he waits. Since he lacks independent resources, his situation becomes immediately desperate."

Neither the termination of disability benefits in *Mathews* nor the termination of unemployment benefits in the case at bar would deprive a claimant of the ". . . very means by which to live while he waits" for a post-termination evidentiary hearing. Id. Here, as in the case of disability benefits, there is a

> ". . . possibility of access to private resources, [and] other forms of government assistance will become available where the termination of disability benefits places a worker or his family below the subsistence level." *Mathews v. Eldridge*, supra, at 342.

Further, eligibility for welfare benefits is based on financial need, but eligibility for unemployment benefits are not. An individual could have $1,000,000 in a savings account and nonetheless be entitled to unemployment benefits. Additionally, the potential deprivation in this case is likely to be less than that of both welfare and disability recipients. Therefore, the administrative procedures provided by the State of Missouri clearly satisfy the

due process requirements of the Fourteenth Amendment with regard to the first factor.

In considering the second factor, we note that the risk of erroneous deprivation of benefits is minimized by the notice and interview procedure which affords the claimant an immediate opportunity to correct an erroneous denial of benefits. This procedure, previously described is fair and reliable. See *Mathews v. Eldridge, supra,* at 343. The record shows that on appeal, where the post-termination evidentiary hearing is held, only 18.96 percent of the cases are reversed. Thus, the risk of erroneous deprivation of unemployment benefits is slight. In *Mathews v. Eldridge, supra,* at 342, the Court stated that ". . . the delay between the actual cutoff of benefits and a final decision after a hearing exceeds one year", and noted that the hardship thus imposed may be significant, but that it would still be less than that of welfare recipients. In this case, an average of 70.45 percent of the appeals rendered with regard to Regular Unemployment Insurance are rendered within less than forty-five days after the appeals are filed. Therefore, it is clear that not only is the risk of a claimant being erroneously deprived of unemployment benefits slight, but any delay caused by such delay would be minimal and significantly less than that in *Mathews.* Accordingly, the due process requirements of the Fourteenth Amendment are satisfied by the administrative procedures provided by the State of Missouri with regard to the second factor.

Finally, the Court must consider the Government's interest. While cost alone is not controlling, it is a factor to be considered when determining the constitutional sufficiency of the administrative procedures provided. *Mathews v. Eldridge, supra.* Should the State of Missouri be required to hold an evidentiary hearing prior to the termination of unemployment benefits, the administrative costs alone would be substantial. Additionally, such a procedure would require that the claimants continue to

receive benefits until a decision was rendered in the pre-termination hearing. While statistics are not available to show the percent of claimants whose unemployment benefits are terminated and then file appeals, it is only logical to assume that if the claimants continue to receive benefits pending the pre-termination decision, an increased percentage would request such a review so as to receive the additional benefits. These "over payments" could, as the plaintiffs contend, be offset against the claimant's benefits when next he receives them, but not all persons apply regularly enough to allow the state to recoup these increased costs.

Having illustrated only a few of the more evident circumstances which would give rise to increased costs, it is clear that the additional burden on the State of Missouri would not be insubstantial. The Court stated in *Mathews v. Eldridge, supra,* at 348, that:

> "At some point the benefit of an additional safeguard to the individual affected by the administrative action and to society in terms of increased assurance that the action is just, may be outweighed by the cost."

After having considered the three distinct factors set out in *Mathews v. Eldridge,* supra, it becomes clear that the "point" has been reached, and that the procedural due process requirements of the Fourteenth Amendment are met by the system now provided by the State of Missouri for the termination of unemployment benefits.

The plaintiffs also contend that by suspending unemployment benefits pending the decisions on appeal, the defendants violate the Social Security Act, 42 U.S.C. §503(a)(1), which provides in pertinent part:

> "(a) The Secretary of Labor shall make no certification for payment to any State unless he finds that the law

of such State, approved by the Secretary of Labor under the Federal Unemployment Tax Act, includes provisions for—

> "(1) Such methods of administration . . . as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due;"

The plaintiffs cite *California Human Resources Dept. v. Java*, 402 U.S. 121 (1971), in support of their position. In *Java*, California had a procedure whereby an admisintrative official would determine initial eligibility for unemployment benefits. However, if the claimant's former employer protested, the claimant's benefits were automatically terminated. The Court found that this procedure violated the "when due" clause of 42 U.S.C. §503(a)(1), and held:

> "We conclude that the word 'due' in §303(a)(1), when construed in light of the purposes of the Act, means the time when payments are first administratively allowed as a result of a hearing of which both parties have notice and are permitted to present their respective positions; any other construction would fail to meet the objective of early substitute compensation during unemployment. Paying compensation to an unemployed worker promptly after an initial determination of eligibility accomplishes the congressional purposes of avoiding resort to welfare and stabilizing consumer demands; delaying compensation until months have elapsed defeats these purposes. It seems clear therefore that the California procedure, which suspends payments for a median period of seven weeks pending appeal, after an initial determination of eligibility has been made, is not 'reasonably calculated to insure full payment of unemployment compensation when due.'" Id. at 133.

Accordingly, the *Java* decision is clearly limited to situations where after a claimant has been initially determined eligible to receive benefits for a particular period, his benefits for that particular period are then terminated. In this case, the initial determinations are made on a week-to-week basis. Therefore, *Java* would be applicable in this case if after a claimant is found eligible for a particular week, his benefits for that particular week were terminated. That situation does not exist here; thus, *Java* is not applicable.

A judgment will be entered in favor of the defendants and against the plaintiffs and the cause will be dismissed with prejudice.

Dated this 3rd day of January, 1977.

/s/ WILLIAM H. WEBSTER
Judge, U. S. Court of Appeals

/s/ JAMES H. MEREDITH
Judge, U. S. District Court

/s/ H. KENNETH WANGELIN
Judge, U. S. District Court

APPENDIX B

United States District Court
Eastern District of Missouri
Eastern Division

Mary A. Graves, et al.,
Plaintiffs,
vs.
John Meystrik, et al.,
Defendants.
No. 76-336 C (1).

ORDER

A memorandum dated this day is hereby incorporated into and made a part of this order.

It Is Hereby Ordered that the plaintiffs' motion to allow this matter to proceed as a class action in accordance with F.R.Civ.P. 23(a) and (b)(2), with the class defined as including all those persons who have been or in the future will be determined eligible to receive Missouri unemployment compensation benefits and who have been or in the future will be denied benefits without timely and adequate prior notice and opportunity for an evidentiary hearing, be and is granted.

It Is Further Ordered that pursuant to F.R.Civ.P. 23(d)(2), notice to the absent members of the class is not required.

Dated this 22nd day of September, 1976.

JAMES H. MEREDITH
Judge, U. S. District Court

WILLIAM H. WEBSTER
Judge, U. S. Court of Appeals

H. KENNETH WANGELIN
Judge, U. S. District Court

United States District Court
Eastern District of Missouri
Eastern Division

Mary A. Graves, et al.,
Plaintiffs,
vs.
John Meystrik, et al.,
Defendants.
No. 76-336 C (1).

MEMORANDUM

This matter is before this three-judge court on the plaintiffs' motion, pursuant to F.R.Civ.P. 23(c)(1), to allow the matter to proceed as a class action in accordance with F.R.Civ.P. 23(a) and (b)(2). The defendants oppose class certification. For the reasons stated below, the motion will be granted.

This alleged class action was brought by the plaintiffs on behalf of themselves, and others similarly situated, seeking to enjoin the enforcement of 288.070.3 and 288.070.5, R.S.Mo. Supp. 1973, to declare said sections unconstitutional, and to restore to plaintiffs all the benefits which were allegedly withheld, suspended, or terminated unjustly pursuant to said sections by the defendants while acting in their official capacities. The plaintiffs claim that their unemployment compensation benefits were terminated without notice and opportunity for a prior evidentiary hearing, and that such alleged action on the part of the defendants was authorized by the Missouri Employment Security Act, §§ 288.070.3 and 288.070.5, R.S.Mo. Supp. 1973. The plaintiffs allege that sections 288.070.3 and 288.070.5 of the Missouri Employment Security Act violate the due process clause of the Fourteenth Amendment to the United States Constitution and the Social Security Act, 42 U.S.C. §501, et seq. Jurisdiction

is conferred on this Court by 28 U.S.C. §1343(3), and the parties have stipulated that jurisdiction is authorized by 28 U.S.C. §2201 and 2202, 42 U.S.C. §1983, and the Social Security Act, 42 U.S.C. §503(a)(1) and (3).

The plaintiffs seek to represent all those persons who have been, or in the future will be, determined eligible to receive Missouri unmployment compensation benefits and who have been, or in the future will be denied benefits without timely and adequate prior notice and opportunity for an evidentiary hearing. The Court finds that such a discernible group of persons exists and certifies the class as such. Further, the record shows that the members of this class will number into the hundreds, therefore, the class is so numerous that joinder of all members is impracticable.

The defendants urge that this action should not be allowed to proceed as a class action under F.R.Civ.P. 23(a), claiming that there are many reasons why an individual may be found not entitled to receive unemployment benefits and that, because the plaintiffs did not receive benefits for different reasons, none of the plaintiffs have any facts or provisions of law in common. The stipulated legal issue in this case is:

> ". . . whether Sections 288.070.3 and 288.070.5, RSMo Supp. 1973, and the application of those sections by the defendants, violate Title 42 U.S.C., Section 503 (a) (1) and (3) and the Fourteenth Amendment for failure of same to provide notice and a prior evidentiary hearing before a claimant, who had received benefits for a prior week or weeks claimed, for unemployment benefits is denied benefits for a particular week or weeks claimed." *Joint Stipulations*, page 23, filed August 31, 1976.

That question of law is common to all persons in this class, including the representatives. The Eighth Circuit held in *Like v. Carter*, 448 F.2d 798, 802 (8th Cir. 1971), that:

> "Factual differences are not fatal if common questions of law exist. Rule 23(a)(2) requires that there be common questions of law or fact."

Further, the defendants contend that the claims of the representative parties are not typical of the class. The plaintiffs claim that their unemployment benefits were terminated in violation of the Fourteenth Amendment to the United States Constitution and the Social Security Act, pursuant to the enforcement of the Missouri Employment Security Act, sections 288.070.3 and 288.070.5, R.S.Mo. Supp. 1973. It is clear that any person who will be included in the herein-described class necessarily must have claims similar to those of the representatives. Thus, the plaintiffs' claims are typical of the class they seek to represent.

Next, the defendants contend that the plaintiffs will not fairly and adequately protect the interests of the class, asserting that since the plaintiffs have received full hearings on their appeals from the deputies' determinations, subsequent to the filing of the amended complaint, the issues they raise are now moot. It was held in *Doe v. Poelker*, 497 F.2d 1063, 1067 (8th Cir. 1974), that:

> "However, a case presenting a question that is 'capable of repetition, yet evading review,' is nevertheless amenable to federal adjudication even though it might otherwise be considered moot."

The Court is of the opinion that the issues herein raised are of the type addressed by the Court in *Doe*, Id., and that the plaintiffs will fairly and adequately represent the interests of the class.

Finally, Rule 23(b)(2), F.R.Civ.P., provides:

> ". . . the party opposing the class has acted or refused to act on grounds generally applicable to the class, thereby

making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole; . . ."

The allegations herein, fall squarely within the plain meaning of this section. The plaintiffs allege that the defendants acted on grounds generally applicable to the class, and they ask for final injunctive relief. While the plaintiffs do pray for an injunction restoring to them and the class they represent all the benefits which were allegedly withheld, suspended, or terminated unjustly, it should be noted that the primary relief sought is to enjoin the enforcement of certain sections of the Missouri Employment Security Act, and not for money damages. Therefore, the action does qualify under F.R.Civ.P. 23(b)(2). *Rodrigues v. Swank*, 318 F.Supp. 289 (N.D.Ill. 1970), aff'd, 403 U.S. 901 (1971).

Notice to the class in an action brought under Rule 23(b)(2) is made discretionary by Rule 23(d)(2). In the exercise of this discretion, the Court should insure that the constitutional due process rights of the absent class members are not violated. While speaking of the requirements of due process, the Supreme Court held in *Hansberry v. Lee*, 311 U.S. 32, 42 (1940), that:

> ". . . this Court is justified in saying that there has been a failure of due process only in those cases where it cannot be said that the procedure adopted, fairly insures the protection of the interests of absent parties who are to be bound by it."

Here, if the plaintiffs are not successful in this action, the class will remain status quo. If the legal issue, as stipulated by the parties, is resolved in favor of the plaintiffs, the entire class would benefit. Therefore, the Court is of the opinion that due process does not require the notification of the absent class members, and that their interests will be protected.

Accordingly, the plaintiff's motion to proceed as a class in accordance with F.R.Civ.P. 23(a) and (b)(2), with the class defined as including all those persons who have been, or in the future will be, determined eligible to receive Missouri unemployment compensation benefits and who have been, or in the future will be, denied benefits without timely and adequate prior notice and opportunity for an evidentiary hearing, will be granted. Further, notice to the absent class members will not be required.

Dated this 22nd day of September, 1976.

JAMES H. MEREDITH
Judge, U. S. District Court

WILLIAM H. WEBSTER
Judge, U. S. Court of Appeals

H. KENNETH WANGELIN
Judge, U. S. District Court

In the United States District Court
Eastern District of Missouri
Eastern Division

Mary A. Graves, et al.,
Plaintiffs,
v.
John Meystrik, et al.,
Defendants.
No. 76-336C(1)

NOTICE OF APPEAL

To: John Ashcroft
Attorney General
Michael L. Boicourt
Assistant Attorney General
Supreme Court Building
Jefferson City, Missouri 65101

Notice is hereby given that Mary A. Graves, Gary Morris and the class they represent, plaintiffs above-named, pursuant to 28 U.S.C. § 1253, hereby appeal to the Supreme Court of the United States from the final judgment dismissing plaintiffs' action entered herein on January 3, 1977.

Respectfully submitted,

/s/ STUART R. BERKOWITZ
607 North Grand Boulevard
St. Louis, Missouri 63103
Telephone: (314) 533-7900
Attorney for Plaintiffs
The Legal Aid Society of the
City and County of
St. Louis